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Annual report of the Expert Mechanism on the Rights of Indigenous Peoples

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I. Introduction

1. In its resolution 6/36, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. In the resolution, the Council established that the thematic expertise would focus mainly on studies and research-based advice, and that the Expert Mechanism might suggest proposals to the Council for its consideration and approval.

2. In September 2016, the Human Rights Council adopted resolution 33/25 amending the Expert Mechanism's mandate: the Expert Mechanism was mandated to provide the Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples and to assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples. The specificities of the new mandate are set out in the resolution.

3. The Expert Mechanism held its eleventh session in Geneva from 9 to 13 July 2018. The summary of the discussions in sections V to XII below is not intended to be a verbatim record, but rather an overview of the main points raised by expert members and other participants. The individual contributions of all participants can be viewed on the webcast of the session.[1] The items of the agenda are presented in the report in the order in which they were taken up at the session.

II. Intersessional activities

4. Since its tenth session, held in July 2017, the Expert Mechanism has undertaken several official intersessional activities. In September 2017, it held an interactive dialogue with the Human Rights Council at the latter's thirty-sixth session as part of the process of submission of the Expert Mechanism's study on good practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities (A/HRC/36/53). On the same occasion, Albert Kwokwo Barume, outgoing Chair of the Expert Mechanism, served as moderator of the half-day panel discussion in the Council on the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. In January 2018, the Expert Mechanism participated in the expert group meeting on sustainable development in territories of indigenous peoples convened by the Permanent Forum on Indigenous Issues.

5. The Expert Mechanism held its intersessional meeting in Santiago in December 2017. The meeting comprised a two-day expert seminar on free, prior and informed consent and a three-day private working meeting of the Expert Mechanism. The Expert Mechanism is grateful to the Human Rights Centre of Diego Portales University for co-organizing and hosting the expert seminar, whose main objective was to obtain substantive input to the Expert Mechanism's study on free, prior and informed consent. The seminar brought together approximately 40 participants, including members of the Expert Mechanism, practitioners from several regions, indigenous human rights advocates, academics and staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

6. The Expert Mechanism participated at the seventeenth session of the Permanent Forum. In addition, several members of the Expert Mechanism engaged with United Nations agencies, regional human rights mechanisms, Member States and civil society organizations at the country level, including through activities related to capacity-building. The Expert Mechanism also provided input to the Human Rights Committee's general comment on the right to life.

[1] Available at http://webtv.un.org.

7. The Expert Mechanism undertook its first two country engagement missions under its new mandate: to Finland from 10 to 16 February 2018 and to Mexico from 26 February to 2 March 2018. For more information on these country engagement missions see section VI below.

III. Adoption of studies, reports and proposals

A. Adoption of studies and reports

8. During its eleventh session, the Expert Mechanism adopted its study and advice on free, prior and informed consent: a human rights-based approach (A/HRC/EMRIP/2018/62), under paragraph 2 (a) of Human Rights Council resolution 33/25.

9. The Expert Mechanism agreed that the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, could make revisions to the study in the light of the discussions at its eleventh session and agreed to submit the study to the Council at its thirty-ninth session.

B. Proposals

Proposal 1: Participation of indigenous peoples in the Human Rights Council

10. The Expert Mechanism proposes that the Council make further efforts to facilitate the participation of indigenous peoples' representatives, and their representative institutions, given that they are not always organized as non-governmental organizations (NGOs), in its work, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. This would include all meetings relevant to the rights of indigenous peoples, in particular the dialogue of the Expert Mechanism with the Special Rapporteur on the rights of indigenous peoples, the annual half-day discussion on the rights of indigenous peoples and sessions of the Working Group on the Universal Periodic Review. For this purpose, the Expert Mechanism proposes that the Council hold a technical workshop on modalities for enhanced participation of indigenous peoples in the Council.

11. The Expert Mechanism makes the present proposal without prejudice to the ongoing consultative process referred to in General Assembly resolution 71/321, aimed at enhancing the participation of indigenous peoples' representatives and institutions in United Nations meetings.

Proposal 2: Theme of the annual half-day discussion on indigenous peoples at the Human Rights Council

12. In the light of the information set out in its report on lessons learned from 10 years of implementation of the Declaration (A/HRC/36/56), the Expert Mechanism reiterates to the Council its proposal that it hold a half-day discussion on the protection of indigenous human rights defenders at its forty-second session.

13. The Council may also consider convening an interactive panel on the human rights-based approach to the promotion and preservation of indigenous languages, in the light of the International Year of Indigenous Languages that will begin on 1 January 2019. The Expert Mechanism proposes that indigenous participants in this panel be allowed to use their own languages and that adequate resources be allocated for interpretation.

Proposal 3: Increased engagement of Member States with the Expert Mechanism

14. The Expert Mechanism proposes that the Council urge States to engage more actively with the Mechanism's activities, and in particular to attend and participate in its annual sessions, with a view to taking part in dialogue as a core element of the Expert Mechanism's amended mandate.

15. The Expert Mechanism also proposes to the Council that it encourage States to make use of the Expert Mechanism's technical assistance for the implementation of the universal periodic review, treaty bodies and special procedures pertaining to indigenous peoples.

Proposal 4: Promotion of the Expert Mechanism's technical assistance and country engagement mandate

16. The Expert Mechanism proposes to the Council that it encourage States and indigenous peoples to engage more proactively with the Expert Mechanism under its amended mandate pursuant to Council resolution 33/25, including by submitting requests for technical assistance and dialogue facilitation. States should also be encouraged to respond to requests made by indigenous peoples under paragraph 2 (c) and (e) of the resolution and seize the opportunity for dialogue provided by such requests.

Proposal 5: Protection of human rights defenders

17. The Expert Mechanism renews its earlier proposal to the Council that it call upon States to ensure that indigenous human rights defenders, in particular indigenous women and indigenous communities, are guaranteed a safe working environment and security and to review laws that criminalize the work of indigenous human right defenders in compliance with the Declaration and other international standards. In the light of the information set out in its report (A/HRC/36/56), it proposes that the Council request States to ensure that all human rights violations against indigenous communities and human rights defenders, including indigenous women, are investigated and the perpetrators are brought to justice.

18. The Expert Mechanism also calls on the Council to address all allegations and condemn reprisals against indigenous human rights defenders, including United Nations mandate holders working on the rights of indigenous peoples, pursuant to resolution 36/21.

Proposal 6: Free, prior and informed consent in the United Nations system and international financial institutions

19. The Expert Mechanism proposes to the Council that it call upon the agencies of the United Nations system, including the World Intellectual Property Organization and the World Health Organization, as well as international financial institutions such as the World Bank, that are engaged with issues affecting indigenous peoples to ensure good practices consistent with free, prior and informed consent, as advised by the Expert Mechanism in its study on this theme (A/HRC/39/62), and generally to comply with the Declaration and other international standards.

20. The Expert Mechanism also proposes to the Council that it encourage United Nations agencies to make more use of the Mechanism's thematic studies and advice.

Proposal 7: Global Compact for Safe, Orderly and Regular Migration

21. The Expert Mechanism proposes to the Council that it call upon States, in the process of developing and implementing the Global Compact for Safe, Orderly and Regular Migration and in all situations involving migration, both internally and across international borders, to recognize and respect the rights of indigenous peoples under the Declaration and other international standards.

Proposal 8: National action plans to achieve the ends of the Declaration

22. The Expert Mechanism proposes to the Council that it remind States of the commitment undertaken in the outcome document of the World Conference on Indigenous Peoples to cooperate with indigenous peoples to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration. In this regard, it proposes that these action plans be used as a tool to implement the recommendations of international human rights mechanisms, including the universal periodic review, treaty bodies and special procedures, and that States consider seeking the collaboration and support of their national human rights institutions and the Expert Mechanism in the elaboration of these action plans.

Proposal 9: Contributions to the United Nations Voluntary Fund for Indigenous Peoples

23. The Expert Mechanism proposes that the Council urge States to contribute to the United Nations Voluntary Fund for Indigenous Peoples.

Proposal 10: Collaboration with the universal periodic review process

24. The Expert Mechanism reiterates its proposal that the Council and Member States continue to draw increasingly on the Declaration in the universal periodic review process. It also reiterates its proposal that, in future universal periodic review cycles, the Declaration be explicitly included in the list of standards on which the universal periodic review process is based.

Proposal 11: Organization of the Expert Mechanism's annual session

25. The Expert Mechanism proposes to the Council that it consider rescheduling the annual session of the Expert Mechanism to allow for increased participation from Member States and indigenous peoples.

Proposal 12: Reporting to the General Assembly

26. In the light of its amended mandate expanding its scope to technical advice to States, the Expert Mechanism reiterates its previous proposal to the Council that it request the Expert Mechanism to report to the General Assembly every two years, in addition to its annual reporting to the Council.

Proposal 13: Financial requirements for the implementation of the Expert Mechanism's mandate under resolution 33/25

27. The Expert Mechanism proposes that the Council consider allocating resources for the following purposes:

- Pre-session translation of the Expert Mechanism's draft reports
- Translation of requests received from Member States and indigenous peoples under paragraph 2 of resolution 33/25
- Interpretation, local transportation, security (when required) and other logistical needs during country missions

IV. Organization of the session

A. Attendance

28. The Expert Mechanism held its eleventh session in Geneva from 9 to 13 July 2018. All seven members — Erika M. Yamada (Brazil, Chair-Rapporteur), Albert. K. Barume (Democratic Republic of the Congo), Kirsten Carpenter (United States of America), Megan Davis (Australia), Edtami Mansayagan (Philippines), Alexey Tsykarev (Russian Federation) and Laila Susanne Vars (Norway) — attended the session.

29. Representatives of States, parliaments, indigenous peoples, United Nations programmes, bodies and specialized agencies, national and regional human rights institutions, NGOs and academic institutions participated in the session as observers.

30. Also participating in the session were Claire Charters, member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples; Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples; and Mariam Wallet Aboubakrine, Chair of the Permanent Forum on Indigenous Issues.

31. A total of 17 side events were held during the session on a broad array of themes relating to the rights of indigenous peoples. A full listing is available at the Mechanism's webpage.[2]

B. Opening of the session and adoption of the agenda

32. Mohawk Chief Howard Thompson conducted a ceremonial opening prayer, after which Mr. Barume, the outgoing Chair-Rapporteur of the Expert Mechanism, opened the eleventh session and welcomed the United Nations Deputy High Commissioner for Human Rights and the President of the Human Rights Council. The agenda, as contained in document A/HRC/EMIP/2018/1, was adopted.

33. The President of the Human Rights Council highlighted the following points: the importance of the United Nations Voluntary Fund for Indigenous Peoples in ensuring participation and advancing the rights of indigenous peoples; the proclamation of 2019 as the International Year of Indigenous Languages, encouraging States to participate; concerns around the inadequate implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the national level; and the engagement of Member States and indigenous peoples with the Expert Mechanism under its new mandate. The President also brought up the issue of acts of intimidation or reprisals against individuals or groups who cooperated or sought to cooperate with the Council, calling on States to prevent and ensure adequate protection against such acts.

34. The Deputy High Commissioner highlighted the following issues: structural discrimination against indigenous peoples; the deprivation of their rights, dispossession of ancestral land and deprivation of resources necessary for physical and cultural survival; attacks on collective rights to land, territory and resources, and the continued attacks against and killings of indigenous peoples across the world; free, prior and informed consent as a manifestation of the right to self-determination; the exercise of the Expert Mechanism's new mandate for country engagement, which must be understood as inclusive of direct and active engagement by indigenous peoples; and the fact that compliance with free, prior and informed consent helped human rights defenders in the light of reprisals, which represented a grave threat to their freedoms of expression, assembly and association and even their right to life.

C. Election of officers

35. Ms. Yamada was elected Chair-Rapporteur and Ms. Vars and Ms. Carpenter were elected Vice-Chairs-Rapporteurs by acclamation.

V. Study and advice on free, prior and informed consent

36. On opening agenda item 4, Ms. Yamada stated that the Expert Mechanism looked forward to receiving the views of indigenous peoples, States and United Nations mechanisms and agencies on the draft study on free, prior and informed consent. She welcomed the recommendations of indigenous peoples and other stakeholders as essential to completing the study.

37. Mr. Barume introduced the draft study. He mentioned that the Expert Mechanism had received over 50 submissions from indigenous peoples' organizations, Member States, academics, United Nations agencies and other stakeholders for the completion of the study.

38. Experts noted that, as free, prior and informed consent was rooted in the right to self-determination, it was both a standard and a norm which imposed a requirement on the State. Of particular concern in relation to self-determination and consent were the rights of indigenous peoples in voluntary isolation and/or initial contact. The experts highlighted the

[2] See www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session11/SideEventsTimetable.pdf.

need to have a standardized understanding of free, prior and informed consent throughout all United Nations agencies. Also, since 2019 had been proclaimed the International Year of Indigenous Languages, it was considered important that free, prior and informed consent be implemented in indigenous languages and experts were urged to build the capacity of indigenous communities in that regard. To conclude, reflections were shared regarding the creation of protocols related to free, prior and informed consent.

39. Participants added a number of recommendations and concerns, including the need for free, prior and informed consent with regard to both public and private sector activities affecting indigenous communities; capacity-building of local communities and NGOs; the relevance of addressing the legitimacy of indigenous representatives in consultation procedures; the need to include free, prior and informed consent requirements in all measures that could affect the collective interest of indigenous peoples; and the development of good practices. Participants from some regions also mentioned that "fatigue" affected free, prior and informed consent processes and consultations in particular as a consequence of non-compliance with international norms and numerous violations of indigenous peoples' rights as well as the fact that indigenous peoples were only expected, and sometimes even forced, to give their consent. Some participants pointed out that free, prior and informed consent should become a fundamental international principle.

40. The Expert Mechanism was asked to pay particular attention to the legal interpretation of articles 19 and 32 of the Declaration in relation to International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) to avoid a lack of clarity on consent and consultation, and it was cautioned not to confuse private actors and international financial institutions with States. Furthermore, participants remarked on the following topics: reparation in cases of violation of intellectual property; indigenous peoples in voluntary isolation, including their right to remain in voluntary isolation as a manifestation of their self-determination and an expression of their non-consent; the non-recognition of indigenous peoples, with particular emphasis on overseas territories, and the systematic denial of free, prior and informed consent; the fear that self-determination of peoples could conflict with the sovereignty of the State; the need to address free, prior and informed consent as a sociological process with cultural and psychological aspects; and the need to respect autonomous protocols of indigenous peoples.

41. Good practices were highlighted, such as the appointment of advisory councils and the empowerment of local communities and leaders. The Expert Mechanism also acknowledged the participation of the International Labour Office in the discussion regarding free, prior and informed consent. A particularly well-received advance was the recent adoption by the European Parliament of a resolution on violation of the rights of indigenous peoples in the world, including land grabbing, which was mentioned by the Chair-Rapporteur in closing the agenda item. She also mentioned that the Expert Mechanism would closely observe the requests for country engagement, and that its members had emphasized the need for free, prior and informed consent to develop through national practice, in which capacity-building of indigenous peoples played an important role.

VI. Country engagement

42. Ms. Vars opened agenda item 3, explaining how the expanded mandate would complement the work of treaty bodies, special procedures and the universal periodic review. She explained that the implementation of country engagement missions depended on the specific issues to be addressed and emphasized that it was not a monitoring mandate. The different possible actions within the country engagement mandate, including awareness-raising and capacity-building, were then further elaborated.

43. The Expert Mechanism had undertaken a mission to Finland from 10 to 16 February 2018 to consider amendments to the Sámi Parliament Act. In accordance with the Expert Mechanism's methods of work, terms of reference for the mission had been drawn up in consultation with the parties: the Sámi parliament, the State and the Expert Mechanism. The purpose of the Expert Mechanism's country engagement with Finland, as agreed upon

by both parties, was to contribute to proposed amendments to the Sámi Parliament Act of 1995. The objective of the engagement was to provide assistance and advice, and to facilitate dialogue leading to the implementation of relevant recommendations made by human rights mechanisms to Finland, including the Special Rapporteur on the rights of indigenous peoples, the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, in 2013.

44. During its mission, the Expert Mechanism met with members of the Sámi parliament, Sámi representatives, NGOs, State and legal officials, academics and other stakeholders. Following the mission, the Expert Mechanism transmitted a written advisory note to the parties on the two issues upon which it had focused: the definition of Sami for the purpose of the electoral roll and the obligation of the State to negotiate with the Sami. The advisory note was a public record of the mission and could be found on the Expert Mechanism's webpage for the eleventh session.[3]

45. The Second Vice-President of the Sámi parliament, Tuomas Aslak Juuso, added that he viewed the mission as a success. He recommended that future invitations be as specific as possible so as to facilitate dialogue within clear objectives and a convenient timeline. The representative of Finland also reiterated his country's appreciation and its commitment to a continued dialogue and follow-up. He also proposed that the experts should continue follow-up and engage with the parties in Finland until the full completion of the drafting of the amended Sámi Parliament Act.

46. The Expert Mechanism undertook a technical cooperation mission to Mexico, visiting the capital from 26 February to 2 March 2018 in response to a request from the city's Secretariat for Rural Development and Equity for Communities. The mission focused on the provisions regarding indigenous peoples set forth in the Constitution of Mexico City, adopted on 31 January 2017 (arts. 57–59), with the purpose of supporting city authorities in the development of laws and policies for the implementation of the rights of indigenous peoples under the constitution.

47. During its mission, the Expert Mechanism held meetings with the federal Ministry of Foreign Affairs; Mexico City authorities, including the head of government and members of the Cabinet; representatives of *originario* (native) peoples and barrios and resident indigenous communities; agencies of the United Nations system; the Commission on Human Rights of Mexico City; and civil society representatives. The Expert Mechanism also had the opportunity to visit several indigenous communities within Mexico City and participated in capacity-building events for indigenous representatives and Mexico City civil servants.

48. While the technical advisory note for the mission was still in the process of being drafted, the representative of Mexico expressed her appreciation for, and full cooperation with, the Expert Mechanism, as the Constitution of Mexico City contained commitments to the rights of indigenous peoples.

49. The Expert Mechanism thanked the Sámi parliament of Finland and the government of Mexico City for hosting its first two country engagement missions and also thanked the Government of Finland, the Government of Mexico and all the indigenous organizations and representatives that had engaged with the Expert Mechanism during the two missions.

50. Subsequently, the experts welcomed the significant number of possible country engagement requests that had come from the floor and/or been submitted in writing. The requests addressed a broad range of issues, including the removal of children from families; the impact of climate change on indigenous peoples' rights; facilitating dialogue and providing technical advice in matters involving international repatriation of cultural heritage and sacred objects; developing a national action plan for the implementation of the Declaration; access to aquatic biological resources and fishing rights; and the consequences of conservation initiatives on indigenous peoples, including forced removal from their traditional lands. The experts noted that it was also within their mandate to seek dialogue

[3] See www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session11/AdvisorynoteFinlandFinaltoParties.docx.

with the private sector, an element of the mandate that remained unexplored, and explained the step-by-step process of formally requesting country engagement.

51. The members of the Expert Mechanism made several observations regarding country engagement, including the need for documentation to be translated prior to a mission, the possibility of processing some cases without undertaking a mission, and cooperation with other mechanisms in cases when complaints or other information relevant to other mandates was brought to the attention of the Expert Mechanism during country engagement.

VII. Panel discussion on recognition, reparation and reconciliation

52. The Expert Mechanism decided to hold a panel discussion on recognition, reparation and reconciliation to inform its report on that theme, the results of which it would present to the Human Rights Council at its forty-second session under paragraph 2 (b) of resolution 33/25. Ms. Davis opened the discussion on item 8, which started with presentations by Grand Chief Wilton Littlechild (former commissioner, Truth and Reconciliation Commission of Canada), Miriam Dominguez (member of the Presidential Commission on Racial Discrimination of Guatemala) and Eduardo González (expert on transitional justice).

53. Chief Littlechild discussed the current situation of indigenous peoples in Canada regarding reconciliation and analysed the impact of the Truth and Reconciliation Commission of Canada. His presentation addressed important historical moments and past State assimilation policies that had marked the lives of indigenous peoples in Canada, in particular the institution of residential schools, which were places where physical and mental abuse and discrimination had been inflicted against indigenous peoples. As a response to human rights violations, the establishment of a truth commission was a step towards restoring respectful relationships between indigenous peoples and the State. In the case of Canada, the Declaration offered a framework for reconciliation based on the right to self-determination which, in turn, implied the inherent right to self-governance. In addition, reconciliation was considered a healing process that implied, among other things, public apologies, making shared experiences visible, commemoration, recognition, truth and forgiveness. The National Council for Reconciliation had been established to facilitate the process towards justice. The Council collected data and monitored; it reported to Parliament, and the Prime Minister had to provide follow-up plans related to the Council's reports.

54. Ms. Dominguez mentioned the forthcoming census in Guatemala (23 July) and its relevance to updating statistical data on Guatemalan indigenous peoples. She also addressed the issue of poverty among Maya, Garifuna and Xinka women as a consequence of structural discrimination, invisibility and exploitation, which was a current concern. With the Declaration as a framework, she highlighted the importance of respecting the rights of indigenous women and the need for their participation in the public sphere and in processes related to land title regulation. She noted the need to improve the adequacy of culturally sensitive public services, in particular coordination between indigenous and non-indigenous legal systems, access to justice in indigenous languages, maternal health care, bilingual education, public policies on compensation and reconciliation, restitution of material property and cultural reparation. She acknowledged that reparation was still a big challenge in the country and a matter of social rehabilitation that went beyond material compensation.

55. Mr. González addressed the key issues of reconciliation and reparation. He underlined the role of indigenous peoples as actors rather than victims and the pertinence of articles 5, 18 and 19 of the Declaration. In particular, he considered article 19 as critical to the implementation of free, prior and informed consent. Furthermore, he emphasized that truth commission processes were essential in providing evidence of otherwise invisible situations. Although most truth commissions were initially conceived within post-dictatorship contexts, the specificities of indigenous issues were currently understood and increasingly being addressed within truth commission processes with regard to periods

beyond dictatorship regimes. Providing a variety of past examples, he argued that truth commissions led by indigenous peoples should not only focus on the final written report but also on the processes, and in particular the space given to oral witness, in order to ensure that all processes were compatible with the needs of indigenous peoples.

56. Participants noted good practices of States in building strong relations with indigenous peoples. In some countries where processes of reconciliation were taking place, it was considered important to observe and value the reconciliation processes as a whole, not only the outcome documents. It was highlighted that reconciliation processes should address both indigenous and non-indigenous peoples. Participants noted the importance of developing strategies to engage with the entire population as a means of raising awareness on local histories and making contexts and information more visible.

57. Participants also underlined the need to improve and develop frameworks for dialogue, possibly using protocols based on the Declaration. Furthermore, participants stressed the need for a consensual understanding of the concepts used in reconciliation processes, as indigenous and non-indigenous peoples could have different interpretations. In that regard, participants mentioned the importance of access to justice and the recognition of indigenous justice systems. Finally, panellists noted the importance of following up on all the recommendations and procedures involved in reconciliation processes.

VIII. Coordination meeting of United Nations indigenous rights mechanisms

58. Under item 5, the members of the Expert Mechanism held a private meeting with the Chair of the Permanent Forum, the Special Rapporteur on the rights of indigenous peoples and a representative of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples. Participants considered the following issues: coordination of thematic studies; a joint statement for the International Day of the World's Indigenous Peoples on the theme of indigenous peoples' migration and movement; coordination of activities around the International Year of Indigenous Languages; coordination of country engagement activities; and the broadening of the consultation process to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.

IX. Interactive dialogue with national human rights institutions, regional human rights institutions and indigenous human rights institutions

59. Mr. Tsykarev, in opening the interactive dialogue, recalled the importance of item 6 in relation to the amended mandate of the Expert Mechanism. He stressed the enhanced engagement of the Expert Mechanism with national and regional human rights institutions not only during annual sessions but also during intersessional meetings. Regarding the latest developments, Mr. Tsykarev drew attention to the draft discussion paper emerging from the annual general meeting of the Global Alliance of National Human Rights Institutions with the purpose of identifying areas of cooperation between National Human Rights Institutions and the Expert Mechanism (see annex).

60. Mr. Tsykarev thanked the Danish Institute for Human Rights for supporting the participation of the national human rights institutions at the session and welcomed the following panellists: Suzanne Shatikha Chivusia, member of the Kenya National Commission on Human Rights; Gwendolyn Pimentel-Gana member of the Commission on Human Rights of the Philippines; Konstantin Robbek, Ombudsman for small-numbered indigenous peoples' rights of the Republic of Sakha (Yakutia), Russian Federation; Marjorie Herrera Castro, member of the Special Protection Unit, National Human Rights Institution of Costa Rica; and Joel Hernández, member of the Inter-American Commission on Human Rights.

61. The panellists were invited to focus on access to justice for indigenous peoples as well as implementation and monitoring of consultation and free, prior and informed consent. Panel members identified challenges in relation to their work, which were mainly related to the reluctance of States to implement the Declaration, and raised the need for establishing monitoring mechanisms. In that regard, the Expert Mechanism had the potential to foster dialogue at a national level and engage in capacity-building for the implementation of the Declaration.

62. Ms. Chesusia presented the work of her commission, which focused on human rights advocacy, technical training, education, public information and research in Kenya. She particularly highlighted the mission of receiving, investigating and processing complaints from indigenous peoples and evoked positive outcomes achieved in specific cases of land eviction and political representation of indigenous peoples. She expressed the desire to fully engage with the Expert Mechanism in identifying, highlighting and developing responses to human rights challenges currently faced by indigenous peoples.

63. Mr. Robbek presented the mandate of the Ombudsman for small-numbered indigenous peoples in the Russian Federation, including the procedures for his appointment. He explained that his group was an independent working body tackling pressing issues affecting indigenous peoples on a daily basis, including processing of complaints, and playing a positive role in enhancing legislation and promotion of human rights and standards. He indicated his wish to see more such groups being formed in other countries, taking their inspiration from good practices observed in the Russian Federation. Mr. Robbek underscored that he worked not only with small-numbered indigenous peoples but also with larger groups.

64. Ms. Pimentel-Gana outlined the current legal mechanisms available for indigenous peoples and stressed the need for monitoring tools while raising concerns about the recurring problems faced by indigenous communities in the Philippines. An evolving positive step was a future three-level partnership between governmental agencies, civil society and indigenous peoples, which would foster a culture of monitoring and evaluation and provide a forum for dialogue.

65. Mr. Hernández outlined the work of the Commission concerning consultation and free, prior and informed consent and stressed the challenge of implementation in a context of increasing extractive industry projects affecting indigenous communities in the Americas. He underlined the existing difference of jurisprudence on consultation and consent in the inter-American system and mentioned the increasingly high threshold regarding the proportionality principle, as reflected in the study of the Expert Mechanism.

66. Ms. Herrera Castro noted recent legislative progress in regard to access to justice in Costa Rica. Priority attention was being given to indigenous peoples, including arrangements to provide translators and interpreters in native languages. However, implementation was still the main challenge. Moreover, she highlighted the importance of the creation of a consultation mechanism and recalled the active role played by the ombudspersons in urging the State to ensure that the rights of indigenous peoples conferred by international instruments were respected in practice.

67. Ms. Yamada acknowledged that implementation remained the major difficulty and reminded participants that the Expert Mechanism could provide Member States seeking assistance and advice with implementing the recommendations from the universal periodic review, treaty bodies, special procedures and other relevant mechanisms. She emphasized the importance of national human rights institutions in the process of monitoring compliance with those recommendations.

68. Representatives of the participating national human rights institutions all stated their wish for a more significant and concrete engagement with the Expert Mechanism in the near future, especially given that new methods of work had been adopted in the light of the new mandate. They also underlined that since free, prior and informed consent was an important principle in the work of their institutions, they would look into the Expert Mechanism's study on that theme. Both panellists and members of the Expert Mechanism, referring to the draft discussion paper, reiterated their wish to generate further spaces for cooperation. Representatives of national human rights institutions asked the Expert

Mechanism for more advisory support in capacity-building, improving legislation and providing remedies for victims of human rights violations.

X. United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned

69. The discussions on item 7 consisted of a dialogue with Ms. Tauli-Corpuz, Ms. Wallet Aboubakrine, Ms. Charters, Sarah Cleveland, member of the Human Rights Committee, and Aruna Devi Narain, member of the Committee on the Elimination of Discrimination against Women.

70. The panellists acknowledged the positive nature and importance of the Expert Mechanism's first two country engagement missions, the draft study on free, prior and informed consent and the cooperation between United Nations mechanisms working on the rights of indigenous peoples. However, there was a call for further cooperation and coordination in advancing indigenous peoples' rights. Particular concerns were highlighted concerning the criminalization and harassment of and threats against indigenous peoples in the context of increased extractivism and conservation efforts; the need to acknowledge and respect indigenous governance systems; political participation; the need to use, preserve and include indigenous peoples and their practices in biodiversity conservation; the need for global regulation to protect against the intensification of the use of toxic materials; and the disproportionate prevalence of tuberculosis among indigenous peoples. Ms. Charters noted that the Voluntary Fund was working closely with legal and academic experts to develop a practical "how-to" guide on indigenous participation in the United Nations, which was in line with the Special Rapporteur's plea to continue efforts regarding access to information and inspire indigenous peoples to work with the United Nations mechanisms.

71. Ms. Devi Narain noted that the Declaration had been instrumental in the work of the Committee. In particular, article 22 of the Declaration had been used in constructive dialogues and alternative or State reports to elaborate on indigenous issues. Ms. Cleveland highlighted the importance of article 27 of the International Covenant on Civil and Political Rights to address a range of indigenous issues, in which free, prior and informed consent served as a guiding principle. The Human Rights Committee was learning from good practices of other bodies promoting the rights of indigenous peoples, and noted it only addressed the question of self-determination when States did.

72. Representatives of States highlighted their commitment to the Declaration by citing a number of positive developments, including amendments to legislation, national action plans and specific policies such as the capacity-building of teachers. Participants subsequently highlighted the importance of full and effective participation in decision-making processes, including the development of legislation. Recommendations were made to include cultural value systems within the framework of business and human rights; to strengthen free, prior and informed consent in relation to megaprojects; to take action to protect indigenous leaders and human rights defenders; to ensure restitution for past moral and material damages; and to clarify the wording "significant harm" in the Declaration's provision on forced assimilation.

73. Experts and observers noted the need for the Declaration to be known and used as a reference not only at national, regional and international levels but also at subnational and local levels. Particular attention was paid to the recognition of indigenous languages and mother tongue-based education and recognition of indigenous peoples by international and intergovernmental organizations. Experts also condemned the cases of reprisals against human rights defenders and United Nations independent experts, and stressed the need to undertake investigations of those involved and provide remedies for victims.

XI. Panel discussion on cultural heritage, indigenous languages and traditional knowledge

74. The discussion on item 8 was opened by Ms. Carpenter. The panellists were Mr. Tsykarev, Simon Legrand of the World Intellectual Property Organization (WIPO), Irmgarda Kasinskaite-Buddeberg of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Andrea Carmen of the International Indian Treaty Council, Pirjo Kristiina Virtanen of the University of Helsinki and Benki Piyãko, a member of the Ashaninka people of South America.

75. Before opening the panel discussion, Ms. Carpenter recalled that for indigenous peoples, culture manifested in a deep connection to traditional territories along with rituals and traditions that maintained a balance between human, natural and spiritual realms. In that light, she emphasized the importance of indigenous languages as they expressed cosmology and shaped traditional knowledge. The challenges resulting from colonization, displacement, discrimination and climate change had put cultural heritage, knowledge and identity under increasing pressure. While various international instruments defined rights related to both tangible and intangible cultural property and heritage, the Declaration specifically linked the cultural rights of indigenous peoples to their right to self-determination. She referred to the previous work and interest of the Expert Mechanism in relation to cultural heritage.

76. Mr. Tsykarev noted the narrow view of many States related to the rights to cultural participation of indigenous peoples. He welcomed recent seminars on cultural heritage convened by academic institutions, including the University of Helsinki, the University of Lapland and the Sámi Museum Siida. He considered the Expert Mechanism's study on cultural heritage (A/HRC/30/53) an important contribution to ensuring the restitution and repatriation of cultural heritage to the respective indigenous peoples. Subsequently, he explained the efforts of the Expert Mechanism to work with UNESCO on the issue of repatriation and highlighted national and regional good practices. Addressing the ongoing discussions at WIPO related to traditional knowledge, he paid particular attention to free, prior and informed consent in the creation of databases of indigenous peoples' traditional knowledge and the negotiation of multilateral agreements in that field. Finally, Mr. Tsykarev highlighted the role of the Expert Mechanism in the International Year of Indigenous Languages in 2019 and urged that the action for the year plan to use human rights language.

77. Mr. Legrand started his presentation by outlining the twofold purpose of his contribution. Firstly, he explained what was meant by protection of traditional knowledge and cultural expressions from a specific intellectual property perspective and, secondly, he described how such protection was addressed in the work of WIPO. Though there was a difference between protection and preservation, they were complementary. From an indigenous perspective, traditional knowledge and cultural expressions were inherent elements of daily life and the collective interaction with their environment. He highlighted the inclusiveness of the WIPO mandate through the engagement with and of indigenous peoples and recognized the value of article 31 of the Declaration in relation to cultural heritage.

78. Ms. Kasinskaite-Buddeberg focused on the International Year. She highlighted the importance of language expressions as a core component of human rights and fundamental freedoms, and mentioned that the action plan for the International Year had been built on core principles such as diversity and openness, multi-stakeholder partnerships and synergies in international human rights frameworks. That would allow for the sharing of good practices, the integration of indigenous languages in standard-setting mechanisms, capacity-building related to indigenous languages and participation and support in drafting the final document. She stressed that indigenous languages should not be approached only from a cultural perspective, but also as tools for communication, empowerment and peacebuilding.

79. Ms. Carmen focused on the repatriation of indigenous peoples' sacred items and human remains currently held by museums and in private collections. Describing various cases, she showed how international efforts had evolved and called for more control over

exports and the return of cultural, intellectual and spiritual property to the rightful owners. She argued that the United Nations should establish fair, transparent and objective mechanisms for repatriation, developed in conjunction with indigenous peoples. She focused on relevant articles of the Declaration and stressed that customary laws of indigenous peoples must be respected. She extended the gratitude of the Yaqui nation to the institutions that had provided continuous and mutual support in relation to that work.

80. Ms. Virtanen noted that the University of Helsinki had organized an international conference on indigenous peoples' rights to cultural heritage in November 2017 as a follow-up to the report of the Expert Mechanism on that theme. Because of discrimination and appropriation of cultural heritage, the university had focused the conference on understanding indigenous communities for the development and implementation of legal frameworks related to cultural heritage. Ms. Virtanen highlighted the importance of indigenous understanding of heritage and the crucial role of the environment in the co-creation of heritage. She stressed the vital role of indigenous participation in all phases leading up to the protection of cultural heritage so as to include indigenous concepts and governance.

81. Closing the panel discussion, Mr. Piyāko mentioned that culture was not a social construction but rather something into which a person was born and which offered direction to the material and spiritual aspects of daily life. He placed particular emphasis on the importance of sacred sites as a means to communicate with the spiritual realm and expressed his serious concerns about the destruction of nature, the disappearance of indigenous languages and the loss of identity of indigenous peoples following past massacres and displacements. As a spiritual leader, he also expressed his concern at the lack of adequate legal instruments for the recognition of traditional plant medicine, referring specifically to past imprisonments for travelling with ayahuasca, essential to the healing rituals he had performed since childhood. He highlighted the need for organizations and institutions to recognize and facilitate a framework in which traditional medicinal systems could be taught and practised.

XII. Future work of the Expert Mechanism, including focus of the next annual study

82. Under item 10, the Expert Mechanism decided that its next annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration, mandated by paragraph 2 (a) of resolution 33/25, would focus on the theme of indigenous peoples, migration and borders.

83. The Expert Mechanism also decided to prepare a report to the Human Rights Council on good practices and lessons learned regarding efforts to achieve the ends of the Declaration, as authorized by paragraph 2 (b) of resolution 33/25. The report would focus on the theme of recognition, reparation and reconciliation.

Annex

Discussion paper on the interaction between national human rights institutions and the Expert Mechanism on the Rights of Indigenous Peoples

1. The purpose of the present paper is to identify areas for strengthening collaboration between national human rights institutions that are compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)[1] and the Expert Mechanism on the Rights of Indigenous Peoples, a subsidiary body of the Human Rights Council.[2]

2. National human rights institutions and the Expert Mechanism have much to gain from increased cooperation in performing their responsibilities, including in achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples.

3. In its resolution 33/25, the Human Rights Council encouraged the Expert Mechanism to enhance its engagement with national human rights institutions, which should be in accordance with the mandates of each national human rights institution, and decided that the annual meeting of the Expert Mechanism shall be open to the participation of national human rights institutions.

4. The Expert Mechanism recognizes the important role that national human rights institutions have in, inter alia:

- Bringing international human rights standards into domestic legal and policy frameworks
- Enhancing the equal access to and enjoyment of rights by particularly vulnerable groups, including indigenous peoples
- Promoting indigenous peoples' participation in decision-making on issues that concern them (report of the Expert Mechanism on indigenous peoples' right to participate in decision-making)

5. At its tenth session, held in 2017, the Expert Mechanism held an interactive dialogue with national human rights institutions on the implementation of the Declaration. Following this session, the Expert Mechanism and the Global Alliance of National Human Rights Institutions recognized the value in increasing collaboration, in particular in the light of the Expert Mechanism's amended mandate to include country engagement.

Proposals for the collaboration between national human rights institutions and the Expert Mechanism

Annual sessions of the Expert Mechanism

6. The Expert Mechanism has established a standing item on the agenda of its annual sessions, which are held in July in Geneva, on dialogue with national human rights institutions. The Expert Mechanism seeks to provide national human rights institutions with a platform for exchange of good practices and challenges relating to their work on indigenous peoples' rights at country level with Member States, indigenous peoples, United Nations agencies and other stakeholders.

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[1] The Global Alliance of National Human Rights Institutions has an accreditation procedure through which national human rights institutions are examined on their compliance with the Paris Principles. Those deemed to be in full compliance receive an A-status accreditation. In the present document, national human rights institutions refer to those institutions with a constitutional or legislative mandate to protect and/or promote human rights.

[2] The mandate of the Mechanism was amended by Human Rights Council resolution 33/25.

7. The Expert Mechanism's annual sessions also offer national human rights institutions opportunities for side events, making statements and taking part in panel discussions on various human rights themes relevant to indigenous peoples.

8. National human rights institutions can make oral statements during any other relevant item of the agenda, including providing follow-up information on the item relating to the Expert Mechanism's thematic studies.

Reports and studies undertaken by the Expert Mechanism

9. The Expert Mechanism's core mandate includes annual reports on specific rights enshrined in the Declaration. So far, the Expert Mechanism has undertaken such studies on the rights to health, education, language and others. It has also undertaken studies on global human rights trends relating to indigenous peoples.

10. The Expert Mechanism also prepares an annual report on good practices and lessons learned regarding the efforts to achieve the ends of the Declaration. National human rights institutions can make significant contributions to the Expert Mechanism's studies, including by:

- Making suggestions during annual sessions on thematic studies to be undertaken by the Expert Mechanism within its mandate
- Providing inputs to studies and reports undertaken by the Expert Mechanism by written submission, including sharing their own reports on such studies, or orally during annual sessions
- Participating in expert technical meetings in preparation for the studies
- Contributing to the dissemination and awareness-raising of the Expert Mechanism's reports, studies and advice

Country engagement, including country missions

11. The Expert Mechanism's new mandate provides for country engagement with a view to providing technical assistance and facilitating dialogue between States, indigenous peoples and other actors.

12. National human rights institutions, in particular those with a strong indigenous component, have the potential to facilitate the Expert Mechanism's country engagement missions, including by:

- Providing relevant, independent and evidence-based information on the country situation and the status of implementation of the Declaration
- Dialogue facilitation, facilitating contact with indigenous peoples and other relevant stakeholders, participating in meetings with indigenous peoples or other forms of support, when deemed necessary and appropriate
- Contributing to capacity-building, training activities and similar technical assistance interventions that the Expert Mechanism may undertake as part of its country engagement
- Supporting awareness-raising activities

Seminars/expert meeting

13. National human rights institutions can take part in regional seminars and expert meetings held by the Expert Mechanism for the purpose of contributing to its reports and studies.

Joint activities by the Expert Mechanism and national human rights institutions

14. The Expert Mechanism and individual national human rights institutions, or through the Global Alliance, may organize joint activities including:

- Meetings, seminars, conferences and trainings on the work of the Expert Mechanism, including the implementation of the Declaration
- Specific training and promotional activities with national human rights institutions at the national, regional or international level
- Establishing an Expert Mechanism-Global Alliance network of national human rights institutions working on indigenous peoples' rights
- Undertaking joint fundraising activities for capacity-building

Country-based activities of national human rights institutions

15. The Expert Mechanism encourages national human rights institutions to:

- Promote, create awareness and build capacity on the work, reports and studies of the Expert Mechanism and the Declaration, including by advising indigenous peoples and States on the Expert Mechanism's working methods and modalities of country engagement
- Provide advice, support and encouragement to States in achieving the ends of the Declaration
- Promote the translation of the Mechanism's documents into local languages
- Support States and remind them of their commitments undertaken in the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (resolution 69/2), in particular the commitment to develop and implement national action plans to achieve the ends of the Declaration.

Intimidation and reprisals

16. In the light of General Assembly resolutions 68/171, 70/163 and 72/181, the Expert Mechanism encourages national human rights institutions to inform it of situations where national human rights institutions, their members or staff, indigenous peoples or civil society who have sought to engage and/or cooperate with the Expert Mechanism, or who have engaged and/or cooperated with the Expert Mechanism, led to cases of intimidation, persecution or reprisal, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations of the institutions.

17. Information on how to share information about cases of intimidation and reprisals can be found on the web page of the Office of the United Nations High Commissioner for Human Rights.[3]

General information

18. The modalities for taking part in all Expert Mechanism sessions and other activities can be found on the Expert Mechanism's webpage.[4]

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[3] See www.ohchr.org/EN/Issues/Reprisals/Pages/HowToShareInformationAboutCases.aspx.

[4] See http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx.